

**DATED**

**2022**

**INTRA-GROUP AGREEMENT**

between

**SEFTON HOLDING COMPANY LIMITED**

and

**SANDWAY HOMES LIMITED**

and

**SEFTON METROPOLITAN BOROUGH COUNCIL**

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## PARTIES

- (1) **Sefton Holding Company Limited** (Company Registration Number: 1142815 whose registered office is at Magdalen House, Trinity Road, Bootle, Merseyside, L20 3NJ (the “**Holding Company**”));
- (2) **Sefton Metropolitan Borough Council** of Bootle Town Hall, Oriel Road, Bootle, L20 7AE; (“the Council”) and
- (3) **Sandway Homes Limited** (Company Registration Number 11646502) whose registered office is at Magdalen House, Trinity Road, Bootle, Merseyside, L20 3NJ (“**Sandway Homes**”).

## BACKGROUND

- (A) Sandway Homes is a private company limited by shares incorporated in England and Wales under the Companies Act 2006 and at the date of this Agreement is wholly owned by the Holding Company which, in turn, is a wholly owned company of the Council.
- (B) The Council has established the Holding Company and Sandway Homes under sections 1 and 4, Localism Act 2011 to allow the Council to trade and act for commercial purposes. The decision to establish the Holding Company and Sandway Homes was taken by the Cabinet of the Council on 5 October 2017.
- (C) Sandway Homes is a controlled company within the meaning of the Local Government and Housing Act 1989 and a regulated company within the meaning of the Local Authority (Companies) Order 1995.
- (D) The Parties have agreed to execute this Agreement to regulate their respective responsibilities, the governance arrangements and the operation and management of Sandway Homes and the relationship between Sandway Homes, the Holding Company and the Council.

## AGREED TERMS

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Act:** the Companies Act 2006;

**Adequate Procedures:** adequate procedures, as referred to in section

	7(2) of the Bribery Act 2010 and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010;
<b>Articles:</b>	the articles of association of Sandway Homes as amended or superseded from time to time;
<b>Auditors:</b>	means the auditors of Sandway Homes at the relevant time;
<b>Board:</b>	the board of Directors of Sandway Homes as constituted from time to time;
<b>Business:</b>	means activities for commercial purpose and trading within the Council's administrative area and beyond and as may be further defined in any adopted Business Plan;
<b>Business Case:</b>	means any business case for particular activity by Sandway Homes that has been developed by Sandway Homes and adopted by the Board (where in accordance with the Business Plan or any other authority given to the Board by the Shareholders) or by the Shareholders;
<b>Business Day:</b>	any day (other than a Saturday, Sunday or public holiday in the United Kingdom) on which clearing banks in the City of London are generally open for business;
<b>Business Plan:</b>	means the document that may be agreed and adopted by Sandway Homes in accordance with clause 6;
<b>Confidential Information:</b>	has the meaning given in clause 12;
<b>Director:</b>	a director of Sandway Homes;
<b>EBITDA:</b>	means earnings before interest, tax depreciation and amortisation based on an average of Sandway Homes' 12 months historic EBITDA and 12 months forecast EBITDA;
<b>Electronic form:</b>	has the meaning given in section 1168 of the Act;

<b>Encumbrance:</b>	includes any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;
<b>Financial Year:</b>	in relation to Sandway Homes, means the period of 12 months commencing on 1 April and ending on 31 March each year;
<b>Governance Agreement</b>	the agreement of the same date that governs the Holding Company's relationship with the Council as its shareholder
<b>Group:</b>	in relation to a company, that company, any subsidiary or holding company from time to time of that company and any subsidiary from time to time of a holding company of that company; and each company in a group is a member of the Group;
<b>Holding Company and Subsidiary and Wholly-Owned Subsidiary:</b>	mean a "holding company", "subsidiary" and "wholly-owned subsidiary" as defined in section 1159 of the Act and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c) of the Act, as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;
<b>Objectives:</b>	the objectives of Sandway Homes set out in the Business Plan;
<b>Party/Parties:</b>	the Council and/or the Holding Company and/or Sandway Homes as appropriate;
<b>Reserved Matters:</b>	the matters listed in Schedule 1;

<b>Share(s):</b>	means the 100 £1 shares in Sandway Homes;
<b>Shareholders:</b>	means the holders of Shares in Sandway Homes;
<b>“Shareholder Representative”</b>	means the person nominated by the Holding Company as Shareholder and by the Council in its role as Ultimate Shareholder to represent both in all matters relating to the shareholder function with Sandway Homes;
<b>Support Services:</b>	has the meaning set out in Schedule 3;
<b>Support Services Agreement:</b>	the agreement(s) made between the Council and the Company relating to the provision of support services by the Council to the Company;
<b>Ultimate Shareholder</b>	the Council as the parent of the Holding Company and ultimately therefore of all the Holding Company’s subsidiaries

- 1.2 Clause, schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or a schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule.
- 1.4 A **person** includes a natural person, a corporate or unincorporated body (whether or not having a separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.7 All warranties, representations, agreements and obligations expressed to be given or entered into by more than one person are given or entered into jointly and severally by the persons concerned.
- 1.8 A reference to a particular statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts and subordinate legislation for the time being in force made under it provided that, as between the Parties, no such amendment or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party.
- 1.9 A reference to **writing** or **written** includes faxes but no other electronic form.

- 1.10 Documents in **agreed form** are documents in the form agreed by the Parties to this Agreement and initialled by them or on their behalf for identification.
- 1.11 A reference in this Agreement to a document is a reference to the document whether in paper or electronic form.
- 1.12 A reference in this Agreement to **other documents referred to in this Agreement** is a reference to the following documents the Articles and the Support Services Agreement.
- 1.13 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.14 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.15 Where the context permits, **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.16 References to times of day are, unless the context requires otherwise, to London time and references to a day are to a period of 24 hours running from midnight on the previous day.

## **2. SUBSIDIARIES AND NEW GROUP MEMBERS**

- 2.1 The Council and the Holding Company have the right to establish Subsidiaries. Such Subsidiaries will not necessarily become parties to this Agreement and the Council may enter into such intragroup control and service arrangements with the Holding Company or any of its Subsidiaries as the Council may consider appropriate from time to time.
- 2.2 Where the Council proposes that a further organisation (a "**Proposed Group Member**") should become a member of the Group, and the Proposed Group Member is to become a party to this Agreement, the Proposed Group Member shall accede to this Agreement by entering into an accession deed.
- 2.3 The accession deed shall be executed by the Proposed Group Member and the Parties to this Agreement, and the Proposed Group Member shall ensure that, with effect from the accession date, its constitution and business arrangements comply with the provisions of this Agreement.

## **3. THE COUNCIL AS ULTIMATE SHAREHOLDER AND THE HOLDING COMPANY AS SHAREHOLDER**

- 3.1 Sandway Homes acknowledges that the Holding Company as Shareholder will be represented by the Shareholder Representative, as the Council is the Ultimate Shareholder. In accordance with the Council's Constitution, the Shareholder Representative will be supported by officers of the Council.

- 3.2 The Council shall provide to Sandway Homes from time to time details of any Council officers authorised to take decisions on behalf of the Council as Shareholder and the extent of any such authorisation.
- 3.3 Sandway Homes will comply with the Governance Agreement as if every reference to “the Company” in that Agreement were to Sandway Homes as appropriate, in particular the following clauses of the Governance Agreement:
  - (a) Clause 4 – Directors and Management;
  - (b) Clause 7 – Business Plans and Business Cases;
  - (c) Clause 9 – Dividends; and
  - (d) Clause 13 – Information, Scrutiny and Accountability.
- 3.4 Sandway Homes shall consult the Council prior to adopting any policy or procedure for the operation and management of Sandway Homes.
- 3.5 The Council may require that Sandway Homes adopts certain policies or procedures in Sandway Homes’ operation from time to time.
- 3.6 Where the Board considers that compliance with any requirement of the Council under this Agreement would place the Directors in breach or at risk of breach of the Act, any applicable legislation and/or their duties to Sandway Homes then the Board shall seek Shareholder approval of the actions required by the Council and the Board shall be permitted a reasonable period of time to seek independent legal advice if they reasonably believe that they may or will be in breach thereof.

#### **4. RESPONSIBILITIES OF GROUP MEMBERS**

- 4.1 The Parties agree that the Board of the Holding Company and each Subsidiary should have the responsibility for those aspects of its business referred to as its responsibility in Schedule 2 in accordance with its constitution and in its best interests.
- 4.2 The responsibilities are subject only to each Party acting in accordance with:
  - (a) the provisions of this Agreement;
  - (b) any business plan agreed and approved in accordance with the terms of this Agreement;
  - (c) the Group’s OVERALL business and financial strategy; and
  - (d) the Group’s policies and procedures.
- 4.3 The Parties agree that these responsibilities may evolve from time to time and it may therefore be necessary to revise Schedule 3 to reflect changes in responsibilities. Any revisions to Schedule 3 shall be made in accordance with Clause 7.



## **5. GROUP POLICIES**

- 5.1 The Holding Company shall for the benefit of the Group have the power to adopt from time to time such policies, standing orders, financial regulations and standards relating to all or any Group members, as it shall consider appropriate from time to time to ensure compliance with:
- (a) any statutory or regulatory requirements applicable to the Group or any Group member;
  - (b) financial and business probity;
  - (c) good governance practice;
  - (d) risk assessment; and
  - (e) any other matter which the Holding Company considers it is desirable for the Group as a whole to have a consistent policy on,
- and these policies, standing orders, financial regulations and standards shall be designated as "**Group Policies**".
- 5.2 The Parties each covenant to carry on their business in accordance with the Group Policies or other policies for which they are responsible.

## **6. SERVICES**

- 6.1 It is the intention that the Group should benefit, where possible, from the provision of services between Group Members.
- 6.2 Where the Council is able to provide external services and funding, Sandway Homes and the Holding Company agree that they will obtain such services and funding through the Council.
- 6.3 Save for those services which are provided by the Council in accordance with clause 6.2 above, the Holding Company and Sandway Homes may enter into any agreements they may deem appropriate or desirable with any contractors, consultants, or specialist firms for the provision of services.

## **7. VARIATIONS AND REVIEW**

- 7.1 The Council may require a variation to this Agreement. Any such variation shall be recorded in writing and be signed by the Parties.
- 7.2 The operation of this Agreement shall be reviewed annually, or at such other times as the Parties shall agree.

## **8. ANTI-CORRUPTION**

- 8.1 Sandway Homes and the Holding Company each undertakes to the Council that:

- (a) it will not in the course of the operation of the Business, engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- (b) it will maintain in place, anti-corruption procedures in substantially the same form as the Council's anti-corruption procedures which the Parties agree constitute Adequate Procedures; and
- (c) from time to time, at the request of the Council it will confirm in writing that it has complied with its undertakings under clause 8.1(a) and clause 8.1(b) and will provide any information reasonably requested by the other Party in support of such compliance.

## **9. ACCOUNTING**

- 9.1 Sandway Homes shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with HM Revenue & Customs in accordance with the requirements of all applicable laws and generally accepted accounting principles applicable in the United Kingdom.
- 9.2 Sandway Homes shall at all times maintain accurate and complete accounting and other financial records to the standard required by the Council including the accounting standards and financial reporting timescales required by the Council.
- 9.3 The Council and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with the Directors and any employees (if any) of Sandway Homes.
- 9.4 Sandway Homes shall supply the section 151 officer of the Council with the financial and other information necessary to keep the Council informed about how effectively the Business is performing and in particular shall supply the Council with:
  - (a) a copy of any proposed Business Plan for approval in accordance with clause 6;
  - (b) a copy of the audited accounts of Sandway Homes prepared in accordance with the laws applicable in and the accounting standards, principles and practices generally accepted in the United Kingdom, within three months of the end of the year to which the audited accounts relate; and
  - (c) Quarterly management accounts of Sandway Homes to be supplied as soon as reasonably practicable following the end of the month to which they relate and in any event by the final day of the month following the month to which the accounts relate and the accounts shall include a profit and loss account, a balance sheet and a cashflow statement and such other information as the Council may reasonably require.
  - (d) a copy of a report prepared by Sandway Homes in respect of each Financial Year, demonstrating the implementation by the Company of Adequate

Procedures such report to be provided within 20 Business Days of the end of the Financial Year to which it relates.

(e) copies of any proposed or adopted Business Cases.

9.5 The Council may require Sandway Homes, and Sandway Homes shall as soon as possible comply with such a request, to provide any documents, information and correspondence necessary to enable the Council and/or the Holding Company to comply with filing, elections, returns or any other requirements of HM Revenue & Customs or of any other revenue or tax authority.

## **10. TERMINATION**

10.1 This Agreement may be terminated at any time by the Council serving notice to terminate on the Holding Company and Sandway Homes.

10.2 The following provisions of this Agreement remain in full force after termination:

- (a) Clause 1 (Interpretation);
- (b) this clause 9;
- (c) Clause 12 (Confidentiality);
- (d) Clause 14 (Whole Agreement);
- (e) Clause 17 (Variation and Waiver);
- (f) Clause 18 (Costs);
- (g) Clause 22 (Notice);
- (h) Clause 24 (Language);
- (i) Clause 25 (Severance);
- (j) Clause 28 (Governing Law and Jurisdiction); and
- (k) Clause 29 (Dispute Resolution).

10.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties have accrued under it.

## **11. STATUS OF THE AGREEMENT**

11.1 If there is at any time any conflict, ambiguity or discrepancy between the provisions of this Agreement and the Articles, then the provisions of this Agreement shall prevail over the Articles unless the Council directs otherwise. The Parties shall procure that the Articles are amended to accord with the provisions of this Agreement in the event of any conflict.

## 12. CONFIDENTIALITY

12.1 In this clause Confidential Information means any information which:

- (a) any Party may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the Company (including, without limitation, any information provided pursuant to clause 9);
- (b) any Party or any member of its Group may have or acquire (whether before or after the date of this Agreement) in relation to the customers, suppliers, business, assets or affairs of the other Party or any member of the other Party's Group, as a consequence of the negotiations relating to this Agreement or any other agreement or document referred to in this Agreement or the performance of the Agreement or any other agreement or document referred to in this Agreement; or
- (c) relates to the contents of any adopted Business Plan or Business Case.

but excludes the information in clause 12.2.

12.2 Information is not Confidential Information if:

- (a) it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
- (b) any Party can establish to the reasonable satisfaction of the other Party that it found out the information from a source not connected with the other Party or its Group and that the source is not under any obligation of confidence in respect of the information;
- (c) either Party can establish to the reasonable satisfaction of the other Party that the information was known to the first Party before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or
- (d) the Parties agree in writing that it is not confidential.

12.3 Each Party shall at all times use all reasonable endeavours to keep confidential (and to ensure that its employees, agents, Subsidiaries and the employees and agents of such Subsidiaries, any Confidential Information and shall not use or disclose any such Confidential Information except:

- (a) to a Party's professional advisers where such disclosure is for a purpose related to the operation of this Agreement;
- (b) with the written consent of the Party or any member of its Group that the information relates to;
- (c) as may be required by law (to include without limitation the Local Authorities (Companies) Order 1995) or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Party concerned shall, if practicable, supply a copy of the required disclosure to the other before it is disclosed and incorporate any amendments or additions reasonably required by

the other Party and which would not thereby prevent the disclosing Party from complying with its legal obligations;

- (d) to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Party concerned or any member of its Group;
- (e) if the information comes within the public domain (otherwise than as a result of the breach of this clause 12.3)

12.4 Each Party shall inform (and shall use all reasonable endeavours to procure that any Subsidiary) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

- (a) to keep it confidential; and
- (b) not to disclose it to any third Party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

12.5 Upon termination of this Agreement, either Party may demand from the other the return of any documents containing Confidential Information in relation to the first Party by notice in writing whereupon the other Party shall (and shall use all reasonable endeavours to ensure that its Subsidiaries, and its officers and employees and those of its Subsidiaries shall):

- (a) return such documents; and
- (b) destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information,

save, in each case, for any submission to or filings with governmental, tax or regulatory authorities. Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

12.6 The obligations of each of the Parties in this clause 12 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

### **13. INFORMATION, SCRUTINY AND ACCOUNTABILITY**

13.1 The Parties acknowledge that the Council is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Sandway Homes shall use best endeavours to assist, within the timescale specified by the Council, the Council in responding to any requests for information under that legislation to include the provision of any and all documents that the Council considers reasonably necessary to enable it to respond to the information request. Sandway Homes shall, and shall procure that its employees and agents shall, comply at all times with the Council's policies and procedures on Freedom of Information.

- 13.2 Notwithstanding clause 13.1, Sandway Homes shall comply at all times with the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 as that legislation applies directly to Sandway Homes.
- 13.3 Where Sandway Homes is in receipt of any request for information under the legislation referred to in clause 13.1, then it shall as soon as reasonably practicable pass the request to the Council and have regard to the views of the Council before responding to any such request.
- 13.4 Sandway Homes shall use best endeavours to assist the Council in complying with any and all transparency obligations including without limitation compliance with the Local Government Transparency Code 2015 and any successor codes, policies or guidance.
- 13.5 Sandway Homes shall use best endeavours to assist the Council in responding to any requests for information about Sandway Homes and/or the Business submitted by elected members of the Council.
- 13.6 Sandway Homes shall on reasonable notice from the Council make available officers and/or employees of Sandway Homes to attend before and answer questions at any meeting of:
- (a) a committee or sub-committee of the Council; and/or
  - (b) any meeting of elected members (to include a directly elected mayor) within the Council's executive arrangements; and/or
  - (c) a committee or sub-committee of the Council's executive arrangements; and/or
  - (d) a meeting of officers and/or elected members of the Council;
- 13.7 Sandway Homes shall supply any information to such committees, sub-committees or other meeting as the Council may reasonably request.
- 13.8 Sandway Homes shall use best endeavours to assist the Council in responding to any inquiry or investigation of/by the Local Government Ombudsman (or any successor).

#### **14. LOCAL AUTHORITIES (COMPANIES) ORDER 1995**

- 14.1 Sandway Homes shall at all times comply with the Local Authorities (Companies) Order 1995, any successor legislation or statutory instrument and any other laws in force from time to time relation to the operation, management and activities of a local authority owned company.

#### **15. WHOLE AGREEMENT**

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede all previous arrangements, understandings and agreements between them, whether oral or written, relating to their subject matter.
- 15.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any

representation or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents.

15.3 Nothing in this clause 14 shall limit or exclude any liability for fraud.

## **16. ASSIGNMENTS**

16.1 Sandway Homes may not assign, or grant any Encumbrance over or sub-contract, or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it without the prior written consent of the Council.

16.2 Each person that has rights under this Agreement is acting on its own behalf.

## **17. VARIATION AND WAIVER**

17.1 A variation of this Agreement shall be in writing and signed by or on behalf of all Parties.

17.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.

17.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

17.4 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy or shall prevent any future exercise in whole or in part thereof.

17.5 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy.

17.6 Unless specifically provided otherwise, rights and remedies arising under this Agreement are cumulative and do not exclude rights and remedies provided by law.

## **18. COSTS**

Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

## **19. NO PARTNERSHIP**

The Parties to this Agreement are not in partnership with each other and there is no relationship of principal and agent between them.

## **20. GOOD FAITH**

20.1 Each Party shall at all times act in good faith towards the other and shall use all reasonable endeavours to ensure that this Agreement is observed.

20.2 Each Party shall do all things necessary and desirable to give effect to the spirit and intention of this Agreement.

## **21. THIRD PARTY RIGHTS**

21.1 A person who is not a Party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 except where such rights are expressly granted in this Agreement.

21.2 The right of the Parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to the Agreement.

## **22. NOTICE**

22.1 A notice given under this Agreement:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent for the attention of the person, and to the address, or email address given in this clause 22 (or such other address, email address or person as the relevant Party may notify to the other Party); and
- (c) shall be:
  - (i) delivered personally; or
  - (ii) delivered by commercial courier; or
  - (iii) sent by email; or
  - (iv) sent by pre-paid United Kingdom first-class post or recorded delivery.

22.2 The addresses for service of notice are:

- (a) The Council

Address: Bootle Town Hall, Oriel Road, Bootle L20 7AE

For the attention of: Executive Director of Place

- (b) The Holding Company

Address: Magdalen House, Trinity Road, Bootle, Merseyside, L20 3NJ

For the attention of: The Company Secretary



Sandway Homes Address: Magdalen House, Trinity Road, Bootle, Merseyside, L20 3NJ

For the attention of: The Company Secretary

22.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

- (a) if delivered personally, at the time of delivery; or
- (b) if delivered by commercial courier, at the time of signature of the courier's delivery receipt; or
- (c) if sent or supplied by email, one hour after the notice was sent or supplied; or
- (d) if sent by pre-paid United Kingdom first class post to an address in the United Kingdom, 48 hours after it was posted or 5 Business Days after posting either to an address outside the United Kingdom or from outside the United Kingdom to an address within the United Kingdom, if (in each case) sent by reputable international overnight courier addressed to the intended recipient, provided that delivery in at least 5 Business Days was guaranteed at the time of sending and the sending Party receives a confirmation of delivery from the courier service provider; or
- (e) if deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of deemed receipt and all references to time are to local time in the place of deemed receipt.

22.4 To prove delivery, it is sufficient to prove that notice was transmitted by email to the email address of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

## **23. INTEREST ON LATE PAYMENT**

23.1 Where a sum is required to be paid under this Agreement but is not paid before or on the date the Parties agreed, the person due to pay the sum shall also pay an amount equal to interest on that sum at the rate set out in clause 22.2 for the period beginning with the date on which the payment was due and ending with the date the sum is paid (and the period shall continue after as well as before judgment).

23.2 The rate of interest shall be 2% per annum above the base lending rate from time to time of the Bank of England. Interest shall accrue on a daily basis and be compounded quarterly.

## **24. LANGUAGE**

If this Agreement is translated into any language other than English, the English language text shall prevail.

## **25. SEVERANCE**

25.1 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

## **26. FURTHER ASSURANCE**

Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

## **27. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

## **28. GOVERNING LAW AND JURISDICTION**

28.1 This Agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

28.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **29. RESOLUTION OF DISPUTES**

29.1 If any dispute arises the Parties will use their reasonable endeavours to reach an agreement to resolve the dispute.

29.2 If the Parties fail to resolve the dispute within 14 calendar days, the matter shall be referred to the Ultimate Shareholder which shall consider all the relevant matters

relating to the dispute and whose decision reached by majority vote shall be final and binding upon the Parties.

This Agreement has been executed and delivered as a deed on the date stated at the beginning of it.

**Schedule 1 Matters reserved for Shareholder approval**

**Sandway Homes**

<b>Matters</b>	<b>Reserved Matters for Shareholder Approval</b>	<b>Matters Delegated for Board Approval</b>	<b>Matters Delegated for Executive Approval</b>
<b>1. Business Plan</b>	<p>Adopting the first and all future Business Plans.</p> <p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change is more than £500,000 in any one financial year.</p>	<p>Varying the timing, scale or programme of works or projects that are included in the Business Plan where the change is £500,000 or less in any one financial year.</p> <p>Non-material departures from the Business Plan</p>	<p>The Board shall be entitled to delegate decisions as detailed in the Business Plan and/or decisions which relate to commitments up to a value of £250,000 to Sandway Homes' Managing Director, subject to the sign-off of the Council's section 151 officer or deputy</p>
<b>2. Appointment of Removal of Directors</b>	<p>Appointment and removal of all Directors.</p> <p>Appointment of the Chair.</p>	None.	None.
<b>3. Variations to the Articles of Association</b>	Any variations to the Company's Articles.	None.	None.
<b>4. Executive Director Remuneration</b>	The approval of the terms and conditions of employment of any	Non-material alterations to terms and conditions	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Executive Approval
	executive director of Sandway Homes.	Performance related pay awards	
<b>5. Employee Recruitment and Remuneration</b>		Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is greater than £75K.	Recruitment of employees and/or agreeing the remuneration of employees where the total remuneration for that position is no more than £75K.
<b>6. Shares</b>	<p>The acquisition of any shares or any option over shares in the capital of any company.</p> <p>The creation, allotment, issuing or redemption of any shares or securities, or the granting of any right to require the creation, allotment, issuing or redemption of any such shares or securities.</p>	None.	None.
<b>7. Issuing or Accepting of Borrowing / Loan Capital</b>	Entering into any borrowing, the issuing of any loan capital or entering into any commitments with any person regarding the	Entering into any borrowing or issuing any loan capital where this is approved in the current Business Plan, to the extent and on the terms set out in the approved	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Executive Approval
	<p>issue of any loan capital outside of the approved Business Plan.</p> <p>Agreeing, as part of the approved Business Plan, the extent of any permitted borrowing delegated for Board approval, and the terms on which that borrowing can be entered into.</p>	Business Plan.	
<b>8. Company Winding up</b>	Passing any resolution for the winding up of Sandway Homes, or presenting any petition for its administration (save for in insolvency).	None.	None.
<b>9. Nature of Company Business</b>	Any material changes to the nature of Sandway Homes's business, or commencing any new business not contemplated by the approved Business Plan.	Any changes to the nature of Sandway Homes's business, or commencing any new business, but only where this is contemplated by the approved Business Plan.	None.

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Executive Approval
<b>10. Acquisitions or Disposals</b>	The acquisition of any land or building or the entering into of any option in respect of any land or building where this is not contemplated by the approved Business Plan.	The acquisition of any land or building or the entering in of any option in respect of any land or building specifically contemplated by the approved Business Plan.	None.
<b>11. Company / Group Structure</b>	Forming any subsidiary or acquiring an interest in any other company or participating in any partnership or corporate joint venture  Amalgamating or merging with any other company or undertaking	None.	None.
<b>12. Stock Exchange Listing</b>	The listing or trading of any shares or debt securities on any stock exchange or market.	None.	None.
<b>13. Appointment of Agents or Subcontractors or</b>	Appointment and variations of terms and conditions of	Appointment and variations of terms and conditions of contractors or	Appointment of contractors or subcontractors in pursuance of the

Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Executive Approval
<b>Arms' Length Transactions</b>	contractors or subcontractors where this is outside the approved Business Plan	subcontractors where this is in pursuance of the approved Business Plan in accordance with the procurement policy of Sandway Homes	approved Business Plan up to a value of £100,000 to the Managing Director of Sandway Homes in accordance with the procurement policy of Sandway Homes
<b>14. Part sale of the business</b>	Selling any part of the business, unless specifically contemplated and authorised in the approved Business Plan.	None.	None.
<b>15. Business Name and Location</b>	Changing Sandway Homes' name, trading name, or registered office, or changing the location of any offices outside of the Company's registered office to a location outside of the Borough.	Changing the location of any offices outside of Sandway Homes' registered office to another location within the Borough only.	None.
<b>16. Intellectual Property</b>	The disposal, sale, assignment or granting of any rights in Sandway Homes' intellectual property outside of the normal	The granting of any rights (by licence or otherwise) in or over any intellectual property owned or used by Sandway Homes in the normal course of business	Where necessary to effect decisions delegated as above up to £100,000



Matters	Reserved Matters for Shareholder Approval	Matters Delegated for Board Approval	Matters Delegated for Executive Approval
	course of business.		
<b>17. Encumbrances</b>	Creating or granting any encumbrance over the whole or any part of Sandway Homes or its business, undertaking or assets, or over any shares in Sandway Homes other than liens arising in the normal course of business.		
<b>18. Redundancy</b>		Dismissing any employee in circumstances in which Sandway Homes will incur or agrees to bear redundancy or other costs (including actuarial costs	
<b>19. Pension</b>		Establishing any new pension scheme, or amending any pension scheme, provided by Sandway Homes to employees.	None.

## **Schedule 2      Support Services**

The Council will provide all support services to Sandway Homes, unless the services provided by the Council do not meet the needs of Sandway Homes.

The Council and Sandway Homes will enter into a separate service level agreement for these services which comprise as at the date:

- Finance;
- Payroll;
- IT;
- Occupational health;
- Workforce development;

### **Schedule 3      Responsibilities**

#### **1.      SEFTON HOLDING COMPANY LIMITED**

- 1.1 To act as a holding company for all Subsidiaries within the Group
- 1.2 To be responsible for all communication with the Council and ensuring that decisions of any Subsidiaries which relate to matters reserved to the Council as described in Schedule 1 are referred for a decision by the Council
- 1.3 preparing and approving any Group corporate strategy and budget and approving the Business Plan of each Subsidiary (subject to the approval of the Council)
- 1.4 monitoring Group members' compliance with all relevant regulatory requirements and taking action in the event of non-compliance
- 1.5 acting as the main liaison point for Group members with the Council (unless otherwise agreed)
- 1.6 personnel and recruitment functions and establishment of human resource, equal opportunity and diversity policies for the whole Group and related procedures including agreement of contractual terms
- 1.7 information technology
- 1.8 all financial services including tax
- 1.9 borrowing, financial management, treasury management and investment policies
- 1.10 internal and external audit
- 1.11 new initiatives – where these involve significant use of resources, whether existing or new
- 1.12 resolving intra-Group conflicts or disputes
- 1.13 procuring legal services for the Group
- 1.14 overseeing health and safety legislative compliance by the Group
- 1.15 insurance (except where specific to the activities of a Subsidiary)
- 1.16 doing all such actions as it may consider appropriate to encourage, ensure and promote the financial and business viability of the Group and that all regulatory requirements affecting the Group are complied with and that the Group's overall reputation and good standing is fully protected at all times.

## **2. SEFTON DEVELOPMENT COMPANY LIMITED**

- 2.1 carrying out all acts necessary or desirable to ensure its business is carried out in accordance with its constitution and overall business objectives and furthered in the manner its Board considers most appropriate subject to the approved business plan, any group corporate strategy and group policies.
- 2.2 accounting to the Holding Company for the delivery of its Business Plan;
- 2.3 co-operating with and assisting in the Group's internal and external audit arrangements
- 2.4 compliance with employment contracts as applicable
- 2.5 compliance with the terms of any other contractual agreements they each enter into with the Holding Company or the Council
- 2.6 reporting to the Holding Company as applicable, and
- 2.7 oversight of any activities that the Holding Company might delegate.

The **COMMON SEAL** of **SEFTON COUNCIL** was affixed to this Deed in the presence of:

.....

[INSERT DETAILS]

Executed as a **DEED** by **SEFTON HOLDING COMPANY LIMITED** acting by [.....], a director, in the presence of:

.....

Director

.....

SIGNATURE OF WITNESS

.....

NAME OF WITNESS (IN BLOCK CAPITALS)

.....

.....

.....

ADDRESS OF WITNESS

.....

OCCUPATION OF WITNESS